



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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March 29, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Further Comments
Telephone Number Portability
CC Docket No. 95-116
DA 96-358

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Promotion and Advancement of Small Telecommunications Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Lisa M. Zaina".

Lisa M. Zaina
General Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Further Comments

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CC Docket No. 95-116

Telephone Number Portability

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**COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

OPASTCO
21 Dupont Circle, NW
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(202) 659-5990

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**COMMENTS OF
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

On July 13, 1995, the Federal Communications Commission (FCC or Commission) released the text of a Notice of Proposed Rulemaking¹ concerning the matter of telephone number portability. Since the conclusion of the pleading cycle for that NPRM, the Telecommunications Act of 1996² was passed into law. The 1996 Act contains several provisions on number portability that will directly affect the rules the Commission must

¹In the Matter of Telephone Number Portability, CC Docket No. 95-116, Notice of Proposed Rulemaking, 10 FCC Rcd 12350 (1995). (NPRM, Notice)

²Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996). (1996 Act, the Act)

promulgate. Appropriately, the Commission has now asked for further comments on number portability in light of the 1996 Act.³ The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby responds to the Commission's request for additional comments.

OPASTCO is a national trade association of more than 450 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which include both commercial companies and cooperatives, together serve over 2 million customers.

On September 12, 1995, OPASTCO filed comments in CC Docket No. 95-116. In its comments, OPASTCO explained how an untempered number portability mandate would lead to increased costs for rural LECs and threaten the provision of universal service in their service areas. The 1996 Act, recognizing that rural areas are different, includes several safeguards to help ensure that its number portability and other interconnection provisions do not harm rural providers and customers. It is incumbent upon the Commission to incorporate both the language and the intent of

³In the Matter of Telephone Number Portability, CC Docket No. 95-116, Public Notice, DA 96-358, March 14, 1996.

these safeguards when developing its rules for number portability.

II. THE COMMISSION SHOULD ALIGN ITS DEFINITION OF NUMBER PORTABILITY WITH THE DEFINITION IN THE 1996 ACT

The first issue that must be addressed as a result of the 1996 Act is how the Commission defines number portability for the purpose of its rules. OPASTCO believes that the Commission's definition should mimic the definition in the 1996 Act. This means limiting the definition to what the Commission refers to in its NPRM as service provider portability.

The NPRM defines service provider portability as "...the ability of end users to retain the same telephone numbers (that is, the same NPA and NXX codes and the same line numbers) when changing from one service provider to another."⁴ Similarly, the 1996 Act defines number portability as "...the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁵ As stated previously in its September 12 comments, OPASTCO does not believe that there

⁴NPRM at para. 13.

⁵1996 Act at Sec. 3(a)(2)"(46)".

are any federal policy objectives served by a mandate which extends beyond service provider portability.

Any federal policy objectives that would be furthered by a service and/or location portability mandate may be at the expense of fundamental public policy goals such as universal service and the rapid deployment of advanced telecommunications services to rural areas. Had Congress believed that service and location portability served important federal policy objectives, it would have included them in the 1996 Act. It did not include them. Furthermore, many commenters in this proceeding, crosscutting through the industry segments, agreed that the Commission should focus its attention on service provider portability.⁶ OPASTCO therefore strongly recommends that the Commission base its definition of number portability on the definition in the 1996 Act.

⁶See, for example, NCTA comments at 8 (...the Commission should separate the issue of service provider portability from the other forms of portability."); AT&T comments at 7 ("[Location and service] portability are not critical tests of local competition and may present implementation problems not associated with "service provider" (or number) portability.").

II. THE FCC MUST RECOGNIZE THE RURAL SAFEGUARDS IN THE 1996 ACT AND INCORPORATE THEM INTO ITS RULES

The 1996 Act contains several provisions that were designed to ensure that when small local exchange carriers (LECs) provide number portability, it will be in the public interest. These include the necessity of a bona fide request, the prerequisite of technical feasibility, and the opportunity for a small LEC to petition its State commission for a suspension or modification of the requirement. It is important that the Commission explicitly acknowledge all three of these provisions in its rules for number portability. In addition, the Commission must establish a definition of "technically feasible" that reflects Congressional intent with regard to small telephone companies.

While it may seem obvious, it is important to note that Congress intended LECs to provide number portability only after a bona fide request has been made. The Joint Explanatory Statement following the main text of the Act states "...that the duties imposed under new section 251(b) make sense only in the context of a specific request from another telecommunications carrier or any other person who actually seeks to connect with or provide

services using the LEC's network."⁷ Thus, the Commission should clearly state in its rules that a LEC is not required to make number portability available unless and until it receives a bona fide request from another entity.

For those LECs that do receive a bona fide request, the 1996 Act requires them "to provide, **to the extent technically feasible**, number portability in accordance with requirements prescribed by the Commission." [emphasis added]⁸ In order for the FCC to implement this provision as intended by Congress, it needs to develop a definition of "technically feasible." OPASTCO believes that an appropriate definition, at least for small LECs, would be when a telecommunications carrier has deployed all of the technology, equipment, and facilities necessary to provide a particular service or perform a particular function. In other words, the Commission should not require a small LEC to upgrade or modify its network in order to provide number portability.

The FCC's adoption of this definition would recognize that for rural areas, the costly upgrades required to provide number

⁷1996 Act, Joint Explanatory Statement of the Committee of Conference, Title I, Subtitle A, Section 101, New Section 251-Interconnection, Conference agreement, para. 2.

⁸1996 Act at Sec. 101(a)"Sec. 251(b)(2)".

portability would be damaging to both the LEC and its customers, possibly leading to increased rates which could force subscribers to drop off the network. The Commission has already made decisions that reflect the understanding that rural areas are different and require unique treatment. The FCC has consistently ruled that applying expanded interconnection, collocation and unbundling requirements to small LECs would "tax their resources and harm universal service and infrastructure development in rural areas."⁹ The Commission's adoption of OPASTCO's definition would advance the Commission's policy of protecting the public interest in rural areas that could be harmed by such a requirement.

The third provision from the 1996 Act that the Commission must acknowledge in its rules concerns suspensions and modifications for rural carriers. This provision states that a LEC with fewer than two percent of the Nation's subscriber lines

⁹Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 92-222, 92-440, 7 FCC Rcd 7398 (1992). See also, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase I, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, 93-379, 8 FCC Rcd 7399-400 (1993); MTS and WATS Market Structure, CC Docket 78-72, 85-98, 100 FCC 2d 879 (1985).

installed in the aggregate nationwide may petition a State commission for a suspension or modification of the number portability requirement. The State commission must grant the petition to the extent that, and for such duration as, it determines that the suspension or modification is necessary: (1) to avoid a significant adverse economic impact on users of telecommunications services generally; (2) to avoid imposing a requirement that is unduly economically burdensome; or (3) to avoid imposing a requirement that is technically infeasible. The suspension or modification must also be consistent with the public interest, convenience, and necessity. The State must act on any petition within 180 days after receiving it. Pending its ruling, the State may suspend enforcement of the FCC's number portability requirements for the petitioning carrier.¹⁰

Combining all three aforementioned provisions of the Act into one coherent policy, OPASTCO envisions the following process to establish a small LEC's compliance with the FCC's number portability rules: A bona fide request would be the "trigger mechanism" to begin the process. Once a request has been made, the small LEC would determine whether or not it is "technically

¹⁰1996 Act at Sec. 101(a)"Sec. 251(f)(2)".

feasible" for it to provide portability to its competitor, based on the definition discussed *supra*. If it is not, the LEC would file a simple form with the FCC certifying that it is unable to provide portability through its network. The FCC would consider the certification to be *prima facie* truthful and in the public interest. The FCC would, however, have a reasonable time period -- say 30 days -- in which to deny the certification. If the Commission did not respond by the established deadline, the LEC would automatically be exempt from providing number portability to the requesting entity that prompted the petition. If the FCC denied the LEC's certification or if the LEC did not file with the FCC, the LEC may still petition its State commission for a suspension or modification of the requirement, as provided by the Act.

IV. CONCLUSION

The 1996 Act is clear about the type of number portability that it seeks to foster (service provider) and about its intent to protect small LECs and their customers from the potentially detrimental affects of number portability in rural areas. By adopting OPASTCO's recommendations, the FCC will implement number portability into the new competitive telecommunications framework as Congress had designed, recognizing the different dynamics between rural and urban areas.

Respectfully submitted,

**ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

By: Stuart Polikoff
Stuart Polikoff
Regulatory and
Legislative Analyst

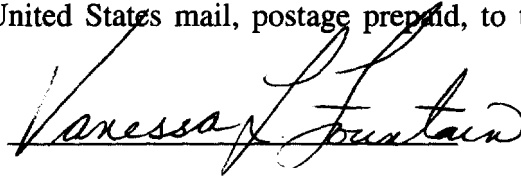
By: Lisa M Zaina
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March 29, 1996

CERTIFICATE OF SERVICE

I, Vanessa L. Fountain, hereby certify that a copy of OPASTCO's comments was sent on this, the 29th day of March, 1996 by first class United States mail, postage prepaid, to those listed on the attached sheet.

A handwritten signature in cursive script, reading "Vanessa L. Fountain", written over a horizontal line.

Vanessa L. Fountain

SERVICE LIST
CC Docket No. 95-116
DA 96-358

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